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In re Application of
McPHEELY et al.
U.S. Application No.: 10/531,332
PCT No.: PCT/US03/33991
Int. Filing Date: 24 October 2003
Priority Date: 25 October 2002
Attorney Docket No.: 036628.00004
For: DIGITAL DIAGNOSTIC VIDEO
SYSTEM FOR MANUFACTURING AND
INDUSTRIAL PROCESSES

DECISION ON PETITION
UNDER 37 CFR 1.47(a)

This decision is issued in response to applicants' "Renewed Petition Under 37 CFR 1.47(a)" filed 29 March 2006 and "Supplemental Submission to Renewed Petition under 37 CFR 1.47(a)" filed 10 April 2006 to accept the application without the signature of joint-inventor Michael S. O'Dea.

BACKGROUND

On 24 October 2003, applicants filed international application PCT/US03/33991 which claimed a priority date of 25 October 2002. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 25 April 2005.

On 14 April 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an unexecuted declaration of inventors.

On 08 September 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 28 December 2005, applicants filed a Petition under 37 CFR 1.47(a) and declaration executed by two of the three joint-inventors. In a decision dated 17 February 2006, applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice.

On 29 March 2006, applicants filed a renewed petition under 37 CFR 1.47(a).

On 10 April 2006, applicants filed "Supplemental Submission to Renewed Petition under 37 CFR 1.47(a)."

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17, (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1) and (4) have been satisfied.

A review of the present petition reveals that applicants have satisfied item (2), in that the applicants have shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Michael S. O'Dea. The steps taken are sufficient to show that Michael S. O'Dea has refused to execute the application.

Regarding item (3) above, a statement of the last known address of the non-signing inventor has been provided.

Accordingly, it is appropriate to accord the national stage application status under 37 CFR 1.47(a).

CONCLUSION

For the reasons above, applicants' renewed petition under 37 CFR 1.47(a) is GRANTED.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.



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Dear Mr. O'Dea:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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